

REMARKS

The outstanding Office Action is the *fourth* in this application. Claims 1-45 were examined. Claims 2, 3, 24 and 25 have been canceled. Claims 1, 4-23 and 26-45 are therefore presented for reconsideration.

Claims 1, 31 and 38 are independent. Claims 1, 4, 17, 26, 31 and 38 have been amended to define the invention more precisely. Support for the amendments is found in the original disclosure in Fig. 2 of the drawing, and in ¶¶ 0037-0040 and 0048 of the description.

The indication of allowable subject matter in claims 10-13, 17, 19-22 and 26-30 is noted, with appreciation. The other claims stand rejected over Bachmann (US 6,622,817) or Yanagashima (US 4,514,599). There is also a rejection under 35 U.S.C. §112 (2nd ¶). All of these rejections are respectfully traversed for at least the following reasons.

REJECTION UNDER 35 U.S.C. §112, 2ND ¶

Claims 1-30 are said to be indefinite, when considering the language of claim 3, based on the assertion that “the massive member includes the coil and magnet assemblies.” Office Action, p.2. That assertion is incorrect. In order to function, an electromagnetic inertial exciter of course must allow relative motion of the voice coil assembly and the relatively massive magnet assembly. See, e.g., ¶¶ 0007-0009 of the description, and lines 3-5 of claim 1. Here, insofar as the preferred embodiment of claim 3 is concerned (see ¶ 0020 of the description), the “massive member” comprises the magnet assembly (which is also a part of the “motor”), and the suspension, which supports the magnet assembly, necessarily allows relative movement of the magnet assembly and the voice coil. In other words, in this embodiment, the massive member cannot include both the magnet assembly and the voice coil. In any event, as claim 3 has been canceled and the terms “motor” and “massive member” no longer appear in the claims, the §112 rejection is moot.

REJECTIONS BASED ON BACHMANN (US 6,622,817)

Claims 1-4, 14, 15, 18 and 23-25 are said to be anticipated by Bachmann under 35 U.S.C. §102(b). Claims 5-8 and 16 are said to be unpatentable over Bachmann under 35 U.S.C. §103(a). These rejections are respectfully traversed for at least the following reasons in the context of independent claim 1, as amended.

It is noted that Bachmann US 6,622,817, which was initially filed as a PCT application, is not available as prior art here. The US Bachmann patent was granted after the filing date of the present application, so it does not qualify under §102(a) or §102(b). Had the Bachmann PCT application been published in English, it would have qualified as §102(e)(2) prior art as of its PCT filing date; but it was published in German (see the enclosed copy of WO 99/60819, which is cited in an IDS concurrently filed herewith). However, WO 99/60819 is *prima facie* prior art under §102(a) because it was published before Applicant's filing date, and almost a year before Applicant's priority date.

Applicant thus traverses the rejections here as though they had been based on Bachmann's published PCT application (WO 99/60819). For the sake of convenience, specific references to the Bachmann disclosure are to the US Bachmann patent, which is presumed to be an accurate English translation of WO 99/60819.

Drawing reference numbers mentioned on pp. 2-3 of the Office Action implicate Fig. 2 of Bachmann, which depicts two parallel panels 11.1, 11.2 flanking a dual driver (two voice coil assemblies 26, 27) having a shared magnet assembly 24. Each of the voice coil assemblies 26, 27 is mounted directly to a surface 21 of a respective panel. Support members 25.1, 25.2 carry the magnet assembly 24. The support members in turn are carried by "resilient members" 18, which span the gap between the panels.

The rejection asserts that each resilient element 18 is a "coupler," and that support members 25.1, 25.2 comprise a "suspension." Assuming, *arguendo*, that such is the case, Bachmann does not meet all the limitations of claim 1 because neither of Bachmann's voice coil assemblies 26, 27 is "attached to the coupler," as now recited in claim 1. Accordingly, Bachmann does not anticipate any of the claims. Nor does Bachmann render any dependent claims unpatentable because the §103 rejection presumes that Bachmann meets all the limitations of parent claim 1, which it clearly does not.

REJECTIONS BASED ON YANAGISHIMA (US 4,514,599)

Claims 31-34, 38, 39 and 41-43 are said to be anticipated by Yanagishima under 35 U.S.C. §102(b).¹ Claims 35-37, 40, 44 and 45 are said to be unpatentable over Yanagishima under 35 U.S.C. §103(a). It is noted that Yanagishima was applied in the first two Office Actions – but not in the third – and has been resurrected in this, the fourth Office Action. These rejections are respectfully traversed for at least the following reasons in the context of independent claims 31 and 38, as amended.

Pages 3-4 of the Office Action suggest (and Applicant will therefore assume) that the rejection is based on Fig. 6 of Yanagishima and the corresponding description at col. 4, lines 50-56. The rejection seems to posit that the more rigid piece 5010 of vehicle panel 52 corresponds to the recited “base plate” for attachment (in a non-repeatedly engageable manner) to the more flexible piece 5009 (also a piece of vehicle panel 52), which functions as the acoustic radiator; and that the exciter 54 is attached to rigid piece 5010 in a repeatedly engageable manner. However, claims 31 and 38 recite that the base plate is “configured to be mounted *on the surface* of” the acoustic radiator. In contrast, in Yanagishima rigid piece 5010 and flexible piece 5009 – both pieces of the same panel 52 – are coplanar, so neither can be said to be configured to be mounted *on the surface* of the other. Accordingly, Yanagishima does not anticipate any of the claims. Nor does Yanagishima render any dependent claims unpatentable because the §103 rejections presume that Yanagishima meets all the limitations of parent claims 31 and 38, which it clearly does not.

CONCLUSION

Applicant respectfully submits that the application is in condition for allowance. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a

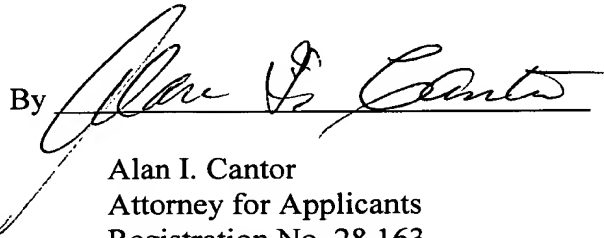
¹ The second full paragraph on page 3 of the Office Action identifies Bachmann as the basis for the §102 rejection of these claims, but the subsequent paragraphs make clear that Yanagishima is the true basis.

check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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